



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0354; FRL-8958-02-R4]

#### **Air Plan Approval; North Carolina; Mecklenburg Air Quality Permit Rules Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The revision was submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ) via a letter dated April 24, 2020, and was received by EPA on June 19, 2020. The revision updates several Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP and adds several rules. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective [Insert 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0354. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9009. Mr. Adams can also be reached via electronic mail at [adams.evan@epa.gov](mailto:adams.evan@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Overview**

In a notice of proposed rulemaking (NPRM) published on September 17, 2021 (86 FR 51848), EPA proposed to approve changes to several rules in the Mecklenburg County LIP. The April 24, 2020, submittal includes changes and updates to the following rules to more closely align them with their analog SIP-approved North Carolina regulations.<sup>1</sup> The January 21, 2016, changes from MCAQ include updates to MCAPCO Rule 1.5214 - *Commencement of Operation*; and the January 14, 2019, changes from MCAQ include updates to MCAPCO Rules 1.5212 - *Applications*; 1.5213 - *Action on Application; Issuance of Permit*; 1.5215 - *Application Processing Schedule*; 1.5219 - *Retention of Permit at Permitted Facility*; 1.5221 - *Permitting of Numerous Similar Facilities*; 1.5222 - *Permitting of Facilities at Multiple Temporary Sites*; and 1.5232 - *Issuance, Revocation, and Enforcement of Permits*.<sup>2</sup> Additionally, the January 14, 2019, portion of the revision requests approval of MCAPCO Rules 1.5217 - *Confidential*

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<sup>1</sup> EPA notes that the April 24, 2020, submittal was received by EPA on June 19, 2020.

<sup>2</sup> The April 24, 2020, revision contains changes to other Mecklenburg LIP-approved rules that are not addressed in this notice. EPA will be acting on those rules in separate actions.

*Information*; 1.5218 - *Compliance Schedule for Previously Exempted Activities*; and 1.5220 - *Applicability Determinations*.<sup>3</sup> The submittal also asks EPA to reincorporate the following rules into the LIP with a new effective date: MCAPCO Rules 1.5301, *Special Enforcement Procedures*; 1.5302, *Criminal Penalties*; 1.5303, *Civil Injunction*; 1.5304, *Civil Penalties*; 1.5306, *Hearings*; 1.5307, *Judicial Review*; 2.0301, *Purpose*; and 2.0305, *Emission Reduction Plant: Alert Level*. The text of these rules has not changed.

The September 17, 2021, NPRM provides detail regarding the background and rationale for EPA's action. Comments were due on or before October 18, 2021, and EPA received three comment submittals. Two submittals are from one individual (hereinafter the "Commenter"), are similar in nature, and are addressed below. The third submittal simply thanked EPA. These comments are available in the docket for this action.

**Comment:** The Commenter is disappointed that the majority of the MCAPCO rules have not been updated by EPA, NCDAQ, or MCAQ since 2003 and notes that recent discoveries have been made regarding the detrimental effects of air pollution in urban areas such as Mecklenburg County. The Commenter is pleased that changes are being made to the MCAPCO rules and states that continuously reviewing and updating air pollution regulations in Mecklenburg County is vital to the public health and wellbeing of local residents.

**Response:** EPA does not have the authority to modify Mecklenburg County's air quality rules. However, the County has updated a number of its MCAPCO rules since 2003 and submitted many of these updates to EPA for incorporation into the LIP through the State's April 24, 2020 SIP revision. In this rulemaking, EPA is acting solely to incorporate the rules identified earlier in this section and discussed in the NPRM. The Agency will address the remainder of the rules contained in the SIP revision in separate actions.

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<sup>3</sup> MCAPCO Rules 1.5217 - *Confidential Information*; 1.5218 - *Compliance Schedule for Previously Exempted Activities*; and 1.5220 - *Applicability Determinations* were erroneously included in the table at 40 CFR 52.1770(c).

The CAA establishes a system of cooperative federalism that sets specific roles for EPA and the states. In this system, EPA provides national leadership and sets national standards for environmental protection such as the National Ambient Air Quality Standards (NAAQS).<sup>4</sup> Pursuant to CAA sections 108 and 109, EPA must thoroughly review each NAAQS every five years to account for the latest scientific knowledge regarding the effects of the air pollutant on public health and welfare.<sup>5</sup> EPA solicits public comment as part of each five-year review and invites the Commenter to share recent scientific discoveries regarding air pollution during those comment periods.

While EPA sets the NAAQS, states play a primary role in implementation. Under CAA section 110, states have broad discretion to choose the mix of emission limitations and other control measures, means, or techniques that they will implement (or update) through a SIP to provide for attainment and maintenance of the NAAQS. EPA's role, with respect to a SIP revision, is focused on reviewing the submission to determine whether it meets the minimum criteria of the CAA. Where it does, EPA must approve the submission. When approving a SIP revision, the Agency is not establishing its own requirements for the state to implement. If, at any time, EPA finds that a SIP is inadequate to attain or maintain the relevant NAAQS or otherwise does not comply with the CAA, EPA has the authority under CAA section 110(k)(5) to require the state to revise its SIP to correct such inadequacies.

EPA agrees that air pollution is detrimental to human health and welfare and appreciates the Commenter's support for this action.

## **II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of MCAPCO Rule 1.5214 - *Commencement of Operation*, which has an effective

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<sup>4</sup> See <https://www.epa.gov/criteria-air-pollutants/naaqs-table> for information regarding the current NAAQS.

<sup>5</sup> See <https://www.epa.gov/criteria-air-pollutants/process-reviewing-national-ambient-air-quality-standards> for information regarding EPA's five-year NAAQS review process.

date of December 15, 2015; and Rules 1.5212 - *Applications*; 1.5213 - *Action on Application*; *Issuance of Permit*; 1.5215 - *Application Processing Schedule*; 1.5217 - *Confidential Information*; 1.5218 - *Compliance Schedule for Previously Exempted Activities*; 1.5219 - *Retention of Permit at Permitted Facility*; 1.5220 - *Applicability Determinations*; 1.5221 - *Permitting of Numerous Similar Facilities*; 1.5222 - *Permitting of Facilities at Multiple Temporary Sites*; and 1.5232 - *Issuance, Revocation, and Enforcement of Permits*, all of which have an effective date of December 18, 2018, into the Mecklenburg County portion of the North Carolina SIP.

EPA has made and will continue to make these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>6</sup>

### **III. Final Action**

EPA is finalizing approval of changes to LIP-approved MCAPCO Rules 1.5212 - *Applications*; 1.5213 - *Action on Application*; *Issuance of Permit*; 1.5214 - *Commencement of Operation*; 1.5215 - *Application Processing Schedule*; 1.5219 - *Retention of Permit at Permitted Facility*; 1.5221 - *Permitting of Numerous Similar Facilities*; 1.5222 - *Permitting of Facilities at Multiple Temporary Sites*; and 1.5232 - *Issuance, Revocation, and Enforcement of Permits*. Additionally, EPA is proposing to approve MCAPCO Rules 1.5217 - *Confidential Information*; 1.5218 - *Compliance Schedule for Previously Exempted Activities*; and 1.5220 - *Applicability Determinations* into the LIP. EPA is taking final action to approve these changes to the LIP because they are consistent with the CAA.

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<sup>6</sup> See 62 FR 27968 (May 22, 1997).

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 26, 2021.

John Blevins,  
*Acting Regional Administrator,*  
*Region 4.*



For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart II – North Carolina**

2. In § 52.1770(c)(3), the table is amended by removing the entries for “Section 1.5212,” “Section 1.5213,” “Section 1.5214,” “Section 1.5215,” “Section 1.5217,” “Section 1.5218,” “Section 1.5219,” “Section 1.5220,” “Section 1.5221,” “Section 1.5222,” and “Section 1.5232” and adding in their place entries for “Rule 1.5212,” “Rule 1.5213,” “Rule 1.5214,” “Rule 1.5215,” “Rule 1.5217,” “Rule 1.5218,” “Rule 1.5219,” “Rule 1.5220,” “Rule 1.5221,” “Rule 1.5222,” and “Rule 1.5232” to read as follows:

### **§ 52.1770 Identification of plan.**

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(c) \* \* \*

### **(3) EPA Approved Mecklenburg County Regulations**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
<b>Article 1.0000 Permitting Provisions for Air Pollution Sources, Rules and Operating Regulations for Acid Rain Sources, Title V and Toxic Air Pollutants</b>				
**	**	*	*	*
<b>Section 1.5200 Air Quality Permits</b>				
**	**	*	*	*
Rule 1.5212	Applications	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Rule 1.5213	Action on Application; Issuance of Permit	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Rule 1.5214	Commencement of Operation	12/15/2015	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	

Rule 1.5215	Application Processing Schedule	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Rule 1.5217	Confidential Information	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Rule 1.5218	Compliance Schedule for Previously Exempted Activities	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Rule 1.5219	Retention of Permit at Permitted Facility	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Rule 1.5220	Applicability Determination	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Rule 1.5221	Permitting of Numerous Similar Facilities	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
Rule 1.5222	Permitting of Facilities at Multiple Temporary Sites	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
**	**	*	*	*
Rule 1.5232	Issuance, Revocation, and Enforcement of Permits	12/18/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	

